



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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**June 7, 2013**

**To Interested Parties:**

**Notice of Emergency Action**

**The State Board of Equalization Has Adopted  
California Code of Regulations, Title 18,  
Section 2000, *Retailer Reimbursement Retention***

**NOTICE IS HEREBY GIVEN**

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). On Tuesday, October 23, 2012, the Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3), initially adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). On May 22, 2013, the Board readopted Regulation 2000, as an emergency regulation pursuant to Government Code section 11346.1, subdivision (h), without making any changes to the regulation’s text.

**EMERGENCY**

*Statement of Emergency*

PRC section 4629.5, subdivision (a)(3) expressly provides that “For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” The emergency circumstances are unchanged since the Board’s initial adoption of Regulation 2000.

*Section 48 Statement*

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the emergency regulation to the Office of Administrative Law (OAL), the Board provide a notice of the emergency regulation to every person who has filed a request for notice of regulatory action with the Board. After submission of the emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the emergency regulation as set forth in Government Code section 11349.6.

**AUTHORITY & REFERENCE**

PRC section 4629.5

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

*Existing Law*

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, the statute provides that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first return or next consecutive returns filed immediately after the retailers are required to begin collecting the assessment on January 1, 2013. The statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p.2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of

their collection duties on January 1, 2013. Therefore, neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of ongoing costs of compliance or of amounts in excess of the Board-specified reimbursement amount.

*Adoption of Emergency Regulation 2000*

The Board added a new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the assessment imposed by PRC section 4629.5, as enacted by AB 1492, can be codified in the new chapter. The Board also voted to adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, on October 23, 2012, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), when retailers started collecting the assessment on January 1, 2013. Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer’s first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer’s next consecutive returns until the allowed reimbursement amount is retained.

“Location” means and is limited to a business location registered under the retailer’s seller’s permit as of January 1, 2013, where sales of products subject to the assessment are made.

Regulation 2000 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5, subdivision (a)(3);
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

*Progress Regarding Adoption of Regulation 2000 through Regular Rulemaking Process*

The California Forestry Association supported the initial adoption of Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5 beginning January 1, 2013.

As a result, Board staff subsequently issued its first discussion paper regarding the adoption of a permanent regulation on December 18, 2012, and the paper was discussed during an interested parties meeting on January 10, 2013. The first discussion paper provided background information regarding the enactment of AB 1492, the Board's adoption of emergency Regulation 2000, and the interested parties' comments regarding the emergency regulation. The first discussion paper also invited the interested parties to provide further comments regarding the Board's adoption of a permanent regulation.

Board staff issued its second discussion paper regarding the adoption of a permanent regulation on February 22, 2013, and the paper was discussed during an interested parties meeting on March 7, 2013. The second discussion paper presented alternative recommendations, including alternatives proposed by interested parties to increase the reimbursement amount for start-up costs and provide for the retention of an annual amount to reimburse retailers for ongoing costs. For example, the Second Discussion Paper explained that West Coast recommended that the initial reimbursement amount be increased to \$5,500 per retail lumber location for startup costs and that an annual retention amount be established of \$1,500 per retail lumber location. However, staff was not able to reach a consensus with the interested parties regarding the substantive provisions of the permanent regulation during the March 7, 2013, interested parties meeting.

Subsequently, a Chief Counsel Memorandum dated May 2, 2013, was prepared and distributed to the Board for consideration at the May 22, 2013, Board meeting. The memorandum recommended that the Board readopt Regulation 2000, as an emergency regulation, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). And, the Board Members unanimously voted to readopt Regulation 2000, as an emergency regulation, during the May 22, 2013, Board meeting without making any changes to the regulation's text.

Finally, Board staff prepared Formal Issue Paper 13-003 and distributed it to the Board Members on May 31, 2013. The paper contains the following three recommendations:

1. Staff's recommendations that the Board adopt Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, through the regular rulemaking process, to provide that "a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the assessment";
2. An alternative recommendation that the Board only adopt Regulation 2000, through the regular rulemaking process, without making any changes, which is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, and was recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson; and
3. Another alternative recommendation that the Board adopt a regulation, through the regular rulemaking process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis, based upon the previously discussed recommendation from West Coast.

The Board is scheduled to consider Formal Issue Paper 13-003 during its BTC meeting on June 11, 2013, and the Board may vote to begin the regular rulemaking process to adopt Regulation 2000, as a permanent regulation, at that time. The forgoing information demonstrates that the Board has made substantial progress and proceeded with due diligence to adopt emergency Regulation 2000 through the regular rulemaking process to comply with the requirements of Government Code section 11346.1, subdivision (e).

#### *No Inconsistent or Incompatible State Regulations*

The Board has performed an evaluation of whether emergency Regulation 2000 is inconsistent or incompatible with existing state regulations and determined that emergency Regulation 2000 is not inconsistent or incompatible with existing state regulations because it is the only existing state regulation prescribing the "amount of reimbursement" a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3).

#### *No Comparable Federal Regulations or Statutes*

There is no federal assessment similar to the assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to emergency Regulation 2000.

### **DOCUMENTS RELIED UPON AND INTERESTED PARTIES COMMENTS**

The Board relied upon a memorandum from its Chief Counsel, Randy Ferris, dated May 2, 2013, the attachment to the memorandum, and the comments made during the discussion of the

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readoption of emergency Regulation 2000 on May 22, 2013, in voting to readopt Regulation 2000 as an emergency regulation.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the readoption of emergency Regulation 2000 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

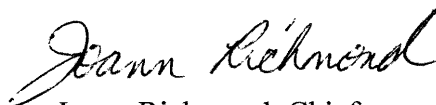
The Board has determined that the readoption of emergency Regulation 2000 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### **CONTACT PERSONS**

Questions regarding the substance of emergency Regulation 2000 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Other inquiries concerning the emergency regulation should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

A handwritten signature in cursive script that reads "Joann Richmond".

Joann Richmond, Chief  
Board Proceedings Division

JR:reb

## Title 18. Public Revenues

### Division 2. State Board of Equalization – Business Taxes

#### Chapter 4.1. Lumber Products Assessment

#### **Regulation 2000. Retailer Reimbursement Retention**

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.